

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO : 20349 of 1995

Dated 8th August, 2006

Between

Mumtaz Taher Khambati and ors.

....Petitioners

And

Special Officer and Competent Authority, Urban Land
Ceilings, Moazamjahi Market, Hyderabad and ors.

.....Respondents.

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THE HON'BLE MR JUSTICE R.SUBHASH REDDY
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WRIT PETITION NO : 20349 of 1995

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ORDER:

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This Writ Petition is filed questioning the order dated 28-2-1991 passed by the Special Officer & Competent Authority, under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976, as confirmed by the appellate authority, under Section 33 of the Act.

The fourth petitioner is a registered partnership-firm. Pursuant to the notice issued under Section 6(2) of the Urban Land (Ceiling and Regulation) Act 1976 ('the Act' for brevity), on its behalf, statement prepared under Section 6(1) of the Act was filed,

declaring that it is the owner of the property, covered by land and building, bearing Municipal Nos. 6-2-20 to 22, in total area of 2759.13 Square meters, situated at Bhoiguda, in Secunderabad. Pursuant to the statement, enquiry was conducted, and, provisional order was passed as required under Section 8(1) of the Act. In the said order, total land held by the firm was computed as 2628.13 Square meters. To the said provisional order, the petitioner-firm had filed objections. Apart from several other objections, the petitioner had filed objections, disputing the area covered by structures, claiming entitlement of appurtenant land, and it was also stated that there are three partners in the firm; as such, retainable area has to be decided having regard to their proportionate share in the partnership firm. Before the primary authority, the partners of the fourth petitioner-firm had also filed objections stating that they are the shareholders to the extent of $1/3^{\text{rd}}$ share each in the partnership firm. It was also their case that they do not have any other land in the urban agglomeration. The primary authority, in spite of the fact that large area was covered by structures, on the ground that development was undertaken by constructing residential flats, without obtaining necessary permission as required under Section 22 of the Act, computed the area only to the extent of 131 square meters covered by old structures, and after allowing to retainable area of 1000 square meters, declared that fourth petitioner-firm is having excess land to the extent of 1628.13 square meters. Further, with regard to the objection of the petitioners that retainable area has to be decided with reference to holding of individual shares in the partnership firm, the same was negated by referring definition under Section 2(1) of the Act.

As against the order of the primary authority, the petitioners

have preferred appeal as provided under Section 33 of the Act before the Commissioner, Urban Land Ceiling, Hyderabad. Though specific ground was raised in the appeal to the effect that retainable area has to be decided having regard to their proportionate shares in the firm, but the same was not dealt by the appellate authority and passed the impugned order.

In this writ petition, it is submitted by the learned Counsel appearing for the petitioners that in view of the language employed in sub-section (5) of Section 4 of the Act, the entire land held by the firm has to be notionally divided among the partners, for the purpose of determining the excess land as per the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. It is also submitted by the learned Counsel for the petitioners that though large extent of land was covered by structures, and, the said residential property was developed by constructing flats without disturbing the old structures, entire area covered by structures was not deleted in the computation. Further, it is also the case of the petitioners that in view of the number of dwelling houses existed in the open land, the respondents ought to have considered to allow appurtenant land for every dwelling unit.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that as much as the land was computed as per the definition of 'person' as defined under Section 2(i) of the Act, there are no grounds to interfere with the order of the primary authority, as confirmed by the appellate authority.

In the judgment in the case of *State of Maharashtra Vs. B.E.*

Billimoria^[1], the Supreme Court has held that where any firm has incorporated association or body of individuals holds vacant land, under the provisions of the Act, right or interest of such person in such vacant land shall be taken into account on the basis of his/her share in such firm or association or body. This Court also, in the judgment in the case of *Special Officer & competent Authority, ULC, Hyderabad Vs. M/s Jyothi Art Studio, a Partnership Firm, rep. By V.Nageswara Rao*^[2], referring to the very same provisions of the Act, has held that the entire land held by a firm has to be notionally divided among the partners, for the purposes of determining the vacant land held by each partner.

In this case, it is evident from the record that the total extent of the land held by the fourth petitioner-partnership firm is only 2759.13 square meters and there are three share holders, having 1/3rd share each and they also filed affidavits stating that they do not have any other vacant land in the urban agglomeration. In view of the ratio decided by the Apex Court in the judgment referred above, the finding of the primary authority, for computing the entire area to the firm basing on the definition under Section 2(i) of the Act cannot be sustained. Though the learned Government Pleader appearing for the respondents requested to remand the matter back to the primary authority for reconsideration, but, as much as there is no dispute with regard to number of partners and total extent of land, I do not find any valid ground to remand the matter for fresh consideration. In view of the ratio decided by the Apex Court in the judgment referred above, there is no need to decide with regard to other pleas, namely, large extent is covered by structures and entitlement of appurtenant land, for all the dwelling units.

For the foregoing reasons, the order under challenge passed

by the Special Officer and Competent authority in proceedings CC.No.F2/184/88, dated 28-2-1991, as confirmed by the appellate authority by order dated 10-4-1995 in Appeal No. C.Hyd/45/91, is set aside.

The Writ Petition is allowed. No order as to costs.

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JUSTICE R. SUBHASH REDDY

DATE: 08-09-2006.

Msnr.

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[\[1\]](#) (2003) 7 SCC 336

[\[2\]](#) 1997 (6) ALT 29 (DB)